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SSION AND RECONSTRUCTION.

SPEECH

OF

HON. DANIEL W. GOOCH, OF MASS.,

DELIVERED

IN THE HOUSE OF REPRESENTATIVES MAY, 3, 1864.

The House having under consideration the Bill to guarantee to certain States whose governments have been overthrown a republican form of government—

Mr. GOOCH said:

Mr. SPEAKER: It is a grave mistake for us to suppose that the contest in which we are now engaged has been going on only since the rebels took up arms against the Federal Government. It is almost as old as the Government itself. More than thirty years ago it assumed a form which, but for the patriotism, ability, and firm resolution of the man then in the presidential chair, to preserve, protect, and defend the Constitution of the United States, and faithfully to discharge the duties of the high trust which millions of freemen had committed to his charge, would have devolved upon the generation which has preceded us the duties and responsibilities which we are now called upon to meet. It is equally a mistake to suppose that the agitation of the question of slavery has produced this contest. The contest is older than the agitation. It has been going on ever since two antagonistic states of society commenced existence under our republican form of government, each striving for development and the mastery. I do not believe that any intelligent and reflecting man has ever believed that these two antagonistic states of society would or could continue to exist permanently under the same Government. In the early days of the Republic the leading men of both sections of the country looked forward to the time when it should be peacefully, and with the consent of all parties, abolished. When the leading men of the South came to look upon the institution as essential to their prosperity, and to desire its permanence, they at the same time began to look forward to a dissolution of the Union. The remark of Mr. Calhoun to Commodore Stuart, made more than fifty years ago, is precisely to this point. He said:

"That we are essentially aristocratic I cannot deny; but we can and do yield much to democracy. This is our sectional policy; we are from necessity thrown upon and solemnly wedded to that party, however it may occasionally clash with our feelings, for the conservation of our interests. It is through our affiliations with that party in the middle and western States that we hold power; but when we cease thus to control this nation, though a disjointed democracy, or any material obstacle in that party should tend to throw us out of that rule and control, we shall then resort to the dissolution of the Union."

Mr. Calhoun went on to say that:

"The compromises in the Constitution, under the circumstances, were sufficient for our fathers; but under the altered condition of our country from that period leave to the South no resource but dissolution, for no amendment to the Constitution can be reached under the three-fourths rule."

Mr. Calhoun believed the compromises of the Constitution to be sufficient to secure what its authors, the fathers of the Republic, desired and intended, the temporary existence of the institution of slavery, but not suited to the altered condition of the country, when the permanent existence of slavery was deemed essential to the prosperity of his section, and, seeing that no amendment could be made to that instrument which would afford that security, he and his disciples wedded themselves to the Democratic party, and determined to stake the existence of their country on the success of that party and their ability to control it. When a tariff was passed, and the law enforced which in his opinion favored the development and growth of the free institutions of the North—beneficial to free society, and therefore prejudicial to slave society—he and his associates threatened nullification, and when, in 1860, his followers saw a “disjointed democracy,” and their “power to control the nation” pass away, they attempted dissolution or destruction of the Government.

When nullification had been crushed, General Jackson, seeing that the cause of the conflict between the two sections of the country had not been removed, said :

“The tariff was only the pretext, and disunion and the southern confederacy the real object. The next pretext will be the negro or slavery question.”

He felt that he had but prevented for the time being a contest which would be sure to break out again. Nullification did not go far enough to afford an opportunity to destroy its cause. Secession has not only afforded the opportunity, but made it both a duty and a necessity, if we desire to uphold and maintain the Government. Probably the time has been when every member of this House who desired to see his country rid of the institution of slavery has believed that its abolition could and would be peacefully accomplished; that by placing the Federal Government firmly on the side of freedom, and preventing the extension of slavery into new territory, it could be left to each of the States to determine the time and the mode of emancipation, knowing that, although the time might be distant, still the day would come when the moral and material forces of every State would array themselves against it and secure its destruction. I believe now that such would have been the result had not slavery itself willed it otherwise. When it proved itself to be so antagonistic to the great fundamental principles of the Government, which must and would be carried out in its administration; when it found free society, which it regarded as its enemy, making a far more rapid growth and development than slave society could possibly attain; when it found itself far outstripped in everything which can contribute to the happiness, wealth and power of a people by its rival; when it found that five million people in the South could no longer rule and dictate law to twenty million people in the North, instead of being willing to assume that position in the Government which belonged to it, it determined upon the immediate destruction of the Government which it had so long controlled. The day and the hour which Mr. Calhoun had so long foretold had come. Slavery, in making war upon the Government, has staked its existence upon the issue; and if the Government wins, slavery must die. It has said that it could not and would not live under such a Government, and it must be taken at its word; and while our jurisdiction over every inch of our territory must be made good, that institution which has made itself so hostile to all the great principles of our Gov-

ernment that it has attempted its overthrow and sought its destruction must not find a place in it.

I have said that the contest in which we are now engaged has been going on ever since the beginning of the Government. But its character has been changed from a contest of ideas, of moral and political forces to a contest of arms. That which would have been accomplished slowly, gradually, and peacefully by the working of moral and material forces, is now being done suddenly and violently by contending armies. The whirlwind and the tornado are the instrumentalities of an all-wise God not less than the gentle breeze and the summer shower, and perhaps it is little less presumptuous for us to question the instrumentality in the one case than in the other. Still, when the agency of man is so directly involved as it is in the scenes which are now going on about us, we cannot help feeling and asking how far is he responsible for that which is.

The contest between slavery and freedom, between slave institutions and free institutions, under the same Government, was inevitable, and no man or organization of men now living are responsible for it; it is like the conflict between truth and falsehood, between right and wrong—a conflict which must and will go on until truth and right shall conquer. The men who have supposed that they could stop men's thinking and talking about slavery and freedom, or that by stopping them the conflict would end, are as wise as those men who stop their ears in a thunder storm that they may not be struck by lightning. The only question that we have ever had any power over is, what shall be the form of that conflict? Shall it be peace or war, logic or arms? The slaveholders, knowing that they would meet with no resistance from the Administration of James Buchanan, decided in favor of arms, and hence the bloody conflict in which we are now engaged. Had that Administration the power to have prevented the change of the contest? I believe it had. I believe that there was power enough in the Government, properly administered, to have crushed this rebellion in the very bud. Had Andrew Jackson and James Buchanan but changed places, and James Buchanan been in the presidential chair when General Jackson was there, John C. Calhoun, instead of being an extinguished nullifier, would have been President for a time of a so-called southern confederacy; and had General Jackson been in the presidential chair when James Buchanan was there, Jefferson Davis would to-day be an extinguished secessionist instead of President of the so-called southern confederacy, carrying on war against his Government, and shedding the blood of hundreds of thousands of loyal men. That thing happened which no one of the framers of the Constitution, or any other loyal man ever supposed could happen. The man who had been chosen by millions of freemen to preside over the destinies of the nation, who had sworn to preserve, protect, and defend the Constitution of his country, basely betrayed his trust, consorted with traitors, consented to and connived at the destruction and overthrow of the Government; and during the long months that treason openly made its hostile preparation and avowed its purposes, not only took no step for its suppression, but kept in his Cabinet a Secretary of War who remained until he had stolen everything worth stealing, and then transferred it and himself to his fellow-conspirators; and a Secretary of the Navy who sent every vessel of war to the most distant ports of the world that they

might be beyond the reach of the incoming Administration, and where they could render no service to the Government, who remained to the close and retired with his master amidst the contempt of all loyal men.

Slavery, having found itself unable to contend with the moral and material forces opposed to it, has appealed to arms. Now let arms decide the contest. Heretofore it has been freedom or slavery, the moral and material forces of the world contending. Now it is freedom or slavery, the armies of the loyal people of the country on one side and the armies of the traitors on the other, contending. By no men is this truth so fully realized as by the men in the field, those actively engaged in the contest. I care not what their opinion may have been before the war, you can hardly find an officer or a soldier who has rendered service on the battle-field who does not most heartily agree to this.

The people of the North have not made this issue. We have not had the power to make it. It was made by the rebels, and we have been obliged to accept it. We have foolishly tried on more than one occasion to change it, but have found it impossible to do so. They hold us to the issue they have made. The Government and slavery cannot permanently exist together. Slavery demands the destruction of the Government to secure its own permanent existence, and the Government, to save its life, must destroy slavery. It would be simply an act of folly for us to recognize any government established in any of the seceded States as loyal, and entitled to a status in the Union, which did not provide, in the terms of this bill, that "involuntary servitude is forever prohibited, and the freedom of all persons is guarantied in said State." I know that there have been many, and are still, some men who are exceedingly desirous that we should fight a shadow instead of the real enemy of the Government, and they can look on with the utmost composure and satisfaction at any blow aimed at the shadow; nay, more, they will even assist in the stroke; but when you strike at the real enemy, they will howl as though they themselves were hit. We hear from these men when we propose to adopt vigorous measures for replenishing our armies and giving to our noble volunteers, who have so long borne the dangers and hardships of the field, replenished ranks, that they may march forth to meet the enemy with hope of success; we hear from them when the President proposes to exercise the rightful belligerent power of declaring the slaves of the enemy free; we hear from them when it is proposed that colored men shall be admitted into the service of their country and afford an opportunity to fight for a Government which they are willing to shed their blood to defend; we hear from them when the President proposes to aid and assist in the reconstruction of a truly loyal State government in a rebel State, one that can be trusted; we hear from them when the Congress of the United States proposes to lend its power to aid in the construction of loyal governments in rebel States; we hear from them when our armies meet with defeat in the field, but they are dumb when loyal men rejoice in victory. Their watchword is "unconstitutionality," and their great fear is that the rebellion will meet with some unconstitutional injury or detriment, whereby its power to prolong its existence may be diminished. They wish no act done until the Supreme Court, after due deliberation, has decided that the act to be done is constitutional. They seem to think

that the great object and purpose of our fathers in framing the Constitution was to see to it that nothing of harm should come to the human chattels and real estate of those who should rebel against the Government and seek its overthrow; and that every possible barrier should be placed in the way of the Government and the nation when attempting to maintain its existence; and they seem to regard it as their special mission to see to it that these supposed provisions of the Constitution are rigorously enforced at this time.

Mr. Speaker, I do not believe that these rebels have ceased to be subjects of this Government, or that they are out of the Union. I do not believe that their attempted secession and rebellion have deprived this Government of its right of sovereignty and jurisdiction over them, or released them from the relations and duties of subjects, bound to render obedience to the Constitution and laws. While they, by treason, rebellion, and levying war against the Government, have forfeited all right to the protection of the Constitution and laws; while they have made themselves public enemies, and come to be recognized as belligerents, not only by other Powers, but by the Federal Government, still they owe obedience to this Government not less than they did before secession was attempted. This Government holds to them the two-fold relation of sovereign and belligerent—a sovereign carrying on a just and necessary war to maintain a rightful sovereignty; and they hold to this Government the two-fold relation of subjects and belligerents—rebellious subjects carrying on an unnecessary and unjust war, to overthrow a Government which they themselves assert has never purposely done them a wrong or withheld from them a right.

This being the relative position of the two contending parties, the question arises, what are the rights and powers of the Government in a prosecution of a war for the maintenance of its rightful sovereignty and the reduction to obedience of its rebellious subjects? I answer that it has all the rights and powers which any Government on earth has in carrying on war against its enemies. It can exercise any power, do any act it may deem proper and necessary to do, not prohibited by the law of nations to all Governments alike. There is not a principle or provision, line or word, in the Constitution of the United States which prohibits or prevents the doing of every act or thing Congress may deem necessary or proper to be done to crush rebellion and maintain the sovereignty of the Government. Since the time when the rebels claimed for themselves, and we accorded to them, the character of belligerents, the Constitution of the United States has imposed no more restraint upon Congress and the Commander-in-Chief of our armies, and of course no more protection to the enemy, than it would have done had we been engaged in war with the most distant people on earth. I am wholly at a loss to know what men mean when they talk about straining the provisions or leaping the barriers of the Constitution in the prosecution of the war we are now carrying on against the enemy, and in our efforts to uphold and maintain the Government and save the life of the nation. I know of no provisions or barriers in that instrument that it would be necessary to strain or leap over in order for us to wield against them all the power human ingenuity can devise or human agency can execute.

When these rebels assumed the character and position of belligerents they said to us and the world, "We no longer claim the protection of the Constitution and laws of the United States, but we stand

or fall by the sword;" and the Government said to the rebels, "As you have so willed it, let the sword decide the question." From that moment it ceased to be a question of constitutional and legal right, and became a question of military power and force. I do not wonder that in the very outset of the rebellion we did not fully comprehend the changed relations we bore to these belligerent rebels. We had ever been accustomed to appeal to the Constitution as the great arbiter of disputed questions during our whole national existence, and for a time, at least, many seemed to think that by its provisions we could settle questions between belligerents, not less than questions between peaceful and law-abiding citizens. They seemed to think that while the rebels could conduct against us a war, unrestrained or untrammelled by law or Constitution, we could do to them only those things which we were expressly authorized by statutes and the Constitution to do; and some, even now, seem to fail to understand that the war powers of this Government are undefined. The war powers of any Government are from their very nature undefinable, and the men who should undertake to prescribe, limit, and define them would demonstrate in the very outset that they did not understand the first principles of government, and were wholly unfit to prescribe the fundamental law for any people. The men who framed our Constitution made no such mistake. They had had the experience of both war and peace, and knew full well the powers a Government must possess in order to maintain its existence and an independent position among the nations of the earth. They were too wise to restrict the powers and tie the hands of the Government they were establishing in the prosecution of a war against an enemy seeking its destruction and overthrow, be that enemy foreign or domestic. From the moment the rebels levied war against the Government and we recognized their acts as war in fact, and prepared to meet military force with military force, our right and power to prosecute war against them were in all respects the same as they are to prosecute war against any foreign enemy who may commence against us an unprovoked and unjust war for the dismemberment of our territory. This is and must be the position of this Government until the military power of the rebels is entirely overthrown, the last vestige of rebellion wiped out, and a true and legal government established in every rebel State.

Still, the right of jurisdiction of this Government over all territory and people within the rebel lines is not destroyed or impaired, but remains as perfect as it would have been had it not been interrupted by rebellion; and when we shall have crushed the rebellion and restored peace to all parts of the country, we shall hold this territory, not by a new title, but by the old, not as territory acquired by conquest, but territory defended and maintained against revolt; and the jurisdiction of this Government over the people within the now revolted territory will not be a newly acquired right, but the assertion and maintenance of a right which has always existed. Any act of the so-called confederate government, and any act of the State governments, since secession, will be regarded by this Government as nullities. The rebellion, while it has not destroyed the right of jurisdiction of this Government over any part of our territory, has interrupted its jurisdiction for the time being over so much of our territory as is within the rebel lines, and the seceded States have themselves overturned and destroyed their State governments, so that one

of those governments can now claim no more rights, protection, or recognition from the Federal Government than can the rebel himself.

I know that some say that if this is the fact the overthrow of the rebellion will immediately re-establish the old order of things in the revolted States, and that they will be, at the end of the rebellion, exactly where they were at its beginning. This by no means follows. They themselves have destroyed the old order of things; they have overthrown their State governments; they have brought about an entirely different state of things from that which existed before the rebellion; they have created a new state of society demanding a government and institutions different from those which before existed, and could not continue in harmony with the General Government. The Federal Government cannot recognize, other than as an enemy, any State government which has given in its adhesion to the rebel confederacy. However liberal the President may be in his amnesty proclamations, or the Congress of the United States in its legislation, for the pardon of traitors, I apprehend that rebel State governments will hardly find themselves in the catalogue of the forgiven. Those States must first come under the military rule and control of the United States, and how long they shall continue in that condition is a question which the United States alone has the power to determine. The Federal Government having found itself unable to enforce its lawful authority by civil process has been obliged to invoke the military power, and that power must be continued until a loyal government, truly republican in form, has been organized in every seceded State, and until the people of that State have given satisfactory evidence that they have both the will and the power to keep and maintain such State within the Union against all traitors within its limits. When this time shall come, then such State can with propriety ask that the military power shall be removed, and that her Senators and Representatives shall be admitted into the councils of the nation.

I can see no reason why the President, as Commander-in-Chief, should not, in the meantime, so use the military power as to aid and assist the loyal people of any one of these States in the organization of a loyal State government. As the government which has given its adhesion to the rebel confederacy can never be recognized by the United States, a new government must be organized during the military occupation, which can, at the proper time, be recognized by Congress. All these acts by the President, or the military power under him, in thus aiding and assisting the loyal people in these States, imposes no obligation upon Congress to recognize them until such time as it shall deem proper to do so, and any recognition the military power may see fit to give to these governments can never fix their status in the Union. Congress alone has the power to determine what government is the legitimate one in a State, and its decision is binding on the other departments of the Government. The opinion of the Supreme Court of the United States in *Luther vs. Borden et al.* is precisely to this point:

"Under this article of the Constitution [article four, section four,] it rests with Congress to decide what government is the established one in a State. For as the United States guarantees to each State a republican form of government, Congress must necessarily decide what government is established in the State before it can be determined whether it is republican or not. And when the Senators and Representatives of a State are admitted into the councils of the Union, the authority of the government under which

they are appointed, as well as its republican character, is recognized by the proper constitutional authority. And its decision is binding on every other department of the government and could not be questioned in a judicial tribunal."

The question of the recognition of a government in one of the revolted States does not differ at all from the question of recognition of the government in any State in which the legitimate government has been interrupted, overthrown, or destroyed, and the Federal power invoked to determine which the established and legitimate government is. The question is a political one, and is to be decided by Congress, not by the Executive or the judiciary, and the most authoritative decision which Congress can give to the question is the admission of Senators and Representatives to seats in the councils of the nation; and as each House is the judge of the elections, returns, and qualifications of its members, each must determine for itself what government it will recognize as the established one in any State, and when the Senate and House have by the admission of members to seats decided in favor of the same government in any State the question is settled and the decision binding on the other departments of this Government.

The conclusion to which I come is this: no matter what laws may be passed by Congress, no matter what acts may be done by the Executive, as the governments in the revolted States have by treason, rebellion, and adhesion to the southern confederacy been overthrown and destroyed, no such State can have any status in the Union for any purpose until a loyal State government shall have been established therein, and recognized by the Congress of the United States. And when that shall have been done it will become the duty of the other departments of the Government to immediately recognize the act and accord to such State all the rights and privileges of a State in the Union.

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